

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

999 18<sup>TH</sup> STREET- SUITE 300

DENVER, CO 80202-2466

Phone 800-227-8917

<http://www.epa.gov/region08>

DOCKET NO.: CWA-08-2006-0049

IN THE MATTER OF:

ANDERSON OIL, INC.

510 W. Valley Road

Torrington, Wyoming 82240

RESPONDENT

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**FINAL ORDER**

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Elyana R. Sutin  
Regional Judicial Officer

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

Docket No. **CWA-08-2006-0049**

IN THE MATTER OF:	)	
	)	
Anderson Oil Inc.	)	<b>COMPLAINT AND CONSENT AGREEMENT</b>
510 W. Valley Road	)	
Torrington, Wyoming 82240	)	
<u>Respondent.</u>	)	

Complainant, United States Environmental Protection Agency, Region 8 (“EPA”) or (“Complainant”), and Anderson Oil Inc. (hereinafter “Respondent”) by their undersigned representatives, hereby consent and agree as follows:

A. PRELIMINARY MATTERS

2. This Complaint and Settlement Agreement (“CASA”) is issued to Anderson Oil Inc. (“Respondent”) pursuant to the authority vested in the Administrator of the Environmental Protection Agency ("EPA") by sections 311(b)(6)(B)(i) of the Clean Water Act (“CWA” or “the Act”), 33 U.S.C. § 1321(b)(6)(B)(i), as amended by the Oil Pollution Act of 1990.

3. The Administrator has properly delegated this authority to the undersigned EPA officials.

4. This section authorizes EPA to bring an action under section 311(b)(6)(B)(i) of the Act, 33 U.S.C. §1321(b)(6)(B)(i), for civil administrative penalties against Respondent who has violated, or is in violation of, a requirement or prohibition of the CWA or its implementing regulations.

5. This proceeding is governed by the Consolidated Rules of Practice Governing the

Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (“Consolidated Rules”) set forth at 40 CFR part 22.

6. This CASA is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 CFR §22.13(b), and executed pursuant to 40 CFR §22.18(b)(2) and (3) of the Consolidated Rules of Practice.

7. Respondent admits the jurisdictional allegations contained herein and neither admits nor denies the specific factual allegations contained herein.

8. Respondent waives its rights to a hearing before any tribunal, to contest any issue of law or fact set forth in this CASA.

9. Complainant asserts that settlement of this matter is in the public interest, and Complainant and Respondent agree that entry of this CASA and Final Order without further litigation and without adjudication of any issue of fact or law, is the most appropriate means of resolving this matter.

10. This CASA, upon incorporation into a Final Order, applies to and is binding upon EPA and upon Respondent, and Respondent’s officers, directors, employees, agents, successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent’s responsibilities under this agreement.

11. This CASA contains all terms of the settlement agreed to by the parties.

**B. ALLEGED VIOLATIONS**

12. Respondent is a corporation organized under the laws of Wyoming, and is a "person" within the meaning of sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7) and 1362(5).

13. Respondent was an “owner and operator” of an “onshore facility” within the meaning of sections 311(a)(6) and (10) of the Act, 33 U.S.C. §§ 1321(a)(6) and (10), that stored bulk fuel, formerly known as Anderson Oil, which was located at 510 Valley Road, Torrington, Wyoming (“facility”).

14. On or about April 5, 2005, EPA conducted a Spill Prevention Control and Countermeasure (“SPCC”) inspection (“the Inspection”) at the facility.

15. At the time of the Inspection, the facility had a total oil storage capacity of approximately 106,750 gallons including the following: four 20,000 gallon diesel storage tanks, one 20,000 gallon gasoline storage tank, one 500 gallon fuel oil tank, thirty 55 gallon drums containing various motor oils, one 1,000 gallon underground storage tank (“UST”) that was used as an aboveground tank containing used oil, one 1,500 gallon tank truck and one 2,100 gallon tank truck .

16. During the inspection at the facility, EPA Inspectors observed that the Respondent stored, transferred, distributed, used or consumed gasoline, heating oil, diesel fuel, heating oil, motor oils, and used oil, all within the meaning of “oil” as defined at § 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1).

17. At all times relevant to this CASA, Respondent’s facility was a “non-transportation

related” onshore facility within the meaning of 40 CFR §112.2.

18. At all times relative to this CASA, the facility was located adjacent to a storm drain which was part of a storm water drainage system that flows approximately one mile before emptying directly into the North Platte River.

19. The North Platte River is a “navigable water” and “water of the United States” within the meaning of section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 CFR § 110.1.

20. Section 311(j)(1)(C) of the Act, 33 U.S.C. §1321(j)(1)(C), provides that the President shall issue regulations "establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil ... from vessels and from onshore and offshore facilities, and to contain such discharges ...."

21. EPA promulgated the oil pollution prevention regulations, set forth at 40 CFR part 112, that apply to owners or operators of non-transportation related onshore facilities engaged in storing, transferring, distributing, using, or consuming oil or oil products, and which, due to their location, could reasonably be expected to discharge oil in harmful quantities, as defined in part 110 of this chapter, into or upon the navigable waters of the United States or adjoining shorelines.

22. The facility is a non-transportation onshore facility which, due to its location, could reasonably be expected to discharge oil to a navigable water of the United States (as defined by section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 CFR § 110.1) or its adjoining shoreline that may either (1) violate applicable water quality standards or (2) cause a

film or sheen or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

23. At all times relevant to this CASA, the facility was subject to the oil pollution prevention requirements of 40 CFR part 112, pursuant to section 311(j) of the Act, 33 U.S.C. § 1321(j), and its implementing regulations.

24. 40 CFR § 112.3 requires that owners or operators of onshore and offshore facilities prepare a Spill Prevention, Control, and Countermeasure (“SPCC”) plan in writing, and in accordance with applicable sections of part 112, including, but not limited to, sections 112.7 and 112.8.

25. Section 311(b)(6)(A) of the Act, 33 U.S.C. § 1321(b)(6)(A), authorizes the assessment of a class I civil penalty to any owner or operator in charge of an onshore facility who fails or refuses to comply with any regulation issued under section 311(j) of the Act, 33 U.S.C. § 1321(j).

26. The State of Wyoming’s Department of Environmental Quality notified Respondent that it was subject to the SPCC regulations in a letter dated September 30, 2003.

27. At the time of the SPCC Inspection, the facility did not have a written SPCC plan.

28. The following SPCC implementation measures were found to be deficient at the facility at the time of the Inspection:

- a. Failure to conduct inspections in accordance with written procedures and to maintain the written inspection records for three years (40 CFR §112.7(e));
- b. Failure to provide secondary containment for truck loading and unloading area (40 CFR §112.7(h)(1));
- c. Failure to provide adequate secondary containment for its tanks (40 CFR

- d. §112.8(c)(2));
  - d. Failure to provide facility drainage from undiked areas to a pond, basin, or equivalent catchment device (40 CFR §112.8(b)(3));
  - e. Failure to have rainfall drainage procedures from secondary containment in place (40 CFR §112.8(c)(3)); and
  - f. Failure to provide adequate secondary containment for numerous drums and delivery trucks (40 CFR § 112.8(c)(11)).
29. Respondent failed to prepare and implement an SPCC plan in writing and in accordance with the regulations at 40 CFR §§ 112.7 and 112.8 as required by 40 CFR §112.3.
30. Respondent's failure to prepare and implement an SPCC plan in writing and in accordance with the regulations at 40 CFR §§ 112.7 and 112.8 from April 5, 2005, through and including September 1, 2005 (a duration of approximately 149 days) constitutes violations of 40 CFR §112.3 and sections 311(b)(6)(A), 33 U.S.C. § 1321(b)(6)(A), and 311(j)(1)(C), 33 U.S.C. § 1321(j)(1)(C) of the Act.

### **C. CIVIL PENALTY**

31. As alleged in the preceding Paragraphs, and pursuant to section 311(b)(6)(B)(i) of the Act, 33 U.S.C. §1321(b)(6)(B)(i), and 40 CFR §19.4, the Respondent is liable for civil penalties of up to \$11,000 per day for each day during which the violation continues, up to a maximum total of \$32,500 for all violations.
32. Based on the foregoing Allegations and pursuant to the authority of section 311(b)(6)(B)(i) of the Act, 33 U.S.C. §1321(b)(6)(B)(ii), and 40 CFR § 19.4, Complainant proposes the assessment of administrative penalties against the Respondent in the amount of fifteen thousand dollars (\$15,000).

33. Complainant proposes this penalty amount after considering the applicable statutory penalty factors in section 311(b)(8) of the Act, 33 U.S.C. §1321(b)(8): the seriousness of the violation, the economic benefit to the violator, if any, resulting from the violation, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge, the economic impact of the penalty on the violator, and any other matters as justice may require.

34. Respondent consents to the issuance of a Final Order and consents for the purposes of settlement to the payment of the civil penalty in the amount of fifteen thousand dollars (\$15,000).

34. Respondent consents and agrees to pay a civil penalty in the amount of fifteen thousand

dollars (\$15,000) in four quarterly installments as follows:

**1st payment** of \$3,750 due on October 30, 2006;

**2<sup>nd</sup> payment** of \$3,750 due on January 30, 2007;

**3<sup>rd</sup> payment** of \$3,750 due on April 30, 2007; and

**4<sup>th</sup> payment** of \$3,750 due on July 30, 2007.

35. Respondent consents and agrees to make each and all installments referenced in the preceding paragraph in the manner described below in this paragraph:

a. **Payment is due on the date stated in paragraph 34 of this CASA as ordered** by the Regional Judicial Officer in the Final Order that adopts this CASA. The date the installment payment is made is considered to be the date processed by the Bank described below.

Payments received by 11:00 AM. EST are processed on the same day, those received after 11:00 AM are processed on the next business day.



b. The installment payment shall be made by remitting a cashier's or certified check, including the name and docket number of this case, referencing "Oil Spill Liability Trust Fund-311," for the amount, **payable to the "Environmental Protection Agency,"** to:

**US checks by regular** U.S. Environmental Protection Agency  
**US postal service mail:** P.O. Box 371099M  
Pittsburgh, PA 15251

**Federal Express, Airborne, Mellon Client Service Center**  
**or other commercial carrier:** ATTN: Shift Supervisor  
Lockbox 371099M Account 9109125  
500 Ross Street  
Pittsburgh, PA 15251-0001

**Wire Transfers :** Mellon Bank  
ABA 043000261  
Account 9109125  
22 Morrow Drive  
Pittsburgh PA 15235

A copy of the check shall be sent simultaneously to:

Donna K. Inman  
Technical Enforcement Program (8ENF-T)  
U.S. EPA Region 8  
999 18th Street, Suite 300  
Denver, CO 80202-2466

Tina Artemis  
Regional Hearing Clerk (8RC)  
U.S. EPA Region 8  
999 18th Street, Suite 300  
Denver, CO 80202-2466

c. **In the event that any one installment payment is not received by the specified due date, interest accrues from the date of the final consent order,** not the specified installment due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received. (I.e., on the 1<sup>st</sup> late day, 30 days of interest accrues).

d. In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 31<sup>st</sup> day

from the due date of the 1<sup>st</sup> installment payment, and each subsequent thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (i.e., the 121<sup>st</sup> day from the due date of the 1<sup>st</sup> installment payment). Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.

e. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

#### **D. TERMS AND CONDITIONS**

36. Failure by Respondent to comply with any of the terms of this CASA shall constitute a breach of the CASA and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

37. Nothing in this CASA shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this CASA.

38. Each undersigned representative of the parties to this CASA certifies that he or she is fully authorized by the party represented to bind the parties to the terms and conditions of this CASA and to execute and legally bind that party to this CASA.

39. The parties agree to submit this CASA to the Regional Judicial Officer, with a request that it be incorporated into a Final Order.

40. This CASA, upon incorporation into a Final Order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete, full and final settlement of the violations alleged in this CASA.

41. Each party shall bear its own costs and attorneys fees in connection with all issues associated with this CASA.

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8, Office of Enforcement, Compliance  
and Environmental Justice, Complainant.**

Date: 26 September 2006

By: SIGNED  
Elisabeth Evans  
Director  
Technical Enforcement Program

Date: 26 September 2006

By: SIGNED djj  
Michael T. Risner, Director  
David Janik, Supervisor  
Legal Enforcement Program

Date: 9/27/06

By: SIGNED  
Brenda L. Morris, Attorney  
Legal Enforcement Program

**ANDERSON OIL INC.,  
Respondent.**

Date: 9/27/06

By: SIGNED  
(Signature of Authorized Agent)

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMPLAINT/CONSENT AGREEMENT/FINAL ORDER** in the matter **ANDERSON OIL, INC. DOCKET NO.: CWA-08-2006-0049** was filed with the Regional Hearing Clerk on September 29, 2006

Further, the undersigned certifies that a true and correct copy of the document was delivered to Brenda Morris, Enforcement Attorney, U. S. EPA – Region 8, 999 18<sup>th</sup> Street, Suite 300, Denver, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt requested on September 29, 2006 to:

Anderson Oil Inc.  
Mr. Kelly Anderson  
510 W. Valley Road  
Torrington, Wyoming 82240

Regular Mail to:

U. S. Coast Guard  
Commander  
Finance Center (OGR)  
1430 A Kristina Way  
Chesapeake, VA 23326

Telefaxed to:

U. S. Environmental Protection Agency  
Cincinnati Finance Center  
26 W. Martin Luther King Drive (MS-0002)  
Cincinnati, Ohio 45268  
513-487-2063

September 29, 2006

**SIGNED**\_\_\_\_\_

Tina Artemis  
Regional Hearing Clerk

**THIS DOCUMENT WAS FILED IN THE REGIONAL HEARING CLERK'S OFFICE  
ON SEPTEMBER 29, 2006.**

